



## REQUEST FOR BOARD ACTION

ITEM NO. 16.

**DATE OF MEETING:** October 17, 2011 (Item Tabled from September 19, 2011 Meeting)

**REQUESTED BY:** Benjamin Andrea, Planner II, Planning & Community Development

**SHORT TITLE:** Resolution to Approve a Major Revision to an Existing Special Use Permit (SUP) for the Expansion of a Mining Operation.

**BACKGROUND:** Shelter Creek Capital, LLC, applicant and owner, is requesting approval of a major revision to an existing Special Use Permit (SUP 05-08-15-13R) to allow an increase in the depths previously approved for limestone extraction, sump clarification pit excavation, and elevations to completed and reclaimed lake areas' bottoms. The subject property is located on Highway 53 East, approximately 12.3 miles east of Burgaw and consists of three parcels totaling 397.87 acres identified by Pender County PINs 3372-73-3224-0000, 3372-54-9374-000L, and 3372-84-3536-0000. In accordance with Article 3.12.4.H of the Pender County Unified Development Ordinance, major revisions to Special Use Permits must be submitted to the Board of Commissioners.

**SPECIFIC ACTION REQUESTED:** To hold a public hearing and consider the approval of a revision to an existing Special Use Permit for the expansion of an existing mining operation.

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that:

the Board hereby (approved, modified, denied) a revision to an existing Special Use Permit for the expansion of an existing mining operation, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Brown \_\_\_ Rivenbark \_\_\_ Tate \_\_\_ Ward \_\_\_ Williams \_\_\_

\_\_\_\_\_  
George R. Brown, Chairman      10/17/2011  
Date

\_\_\_\_\_  
ATTEST      Date

**PLANNING STAFF REPORT**  
**Special Use Permit**

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**SUMMARY:**

**Hearing Date:** September 19, 2011  
**Applicant:** Shelter Creek Capital, LLC  
**Property Owner:** Shelter Creek Capital, LLC  
**Case Number:** 10019

**Land Use Proposed:** The applicant is requesting approval of a major revision to an existing Special Use Permit (SUP 05-08-15-13R) to allow an increase in the depths previously approved for limestone extraction, sump clarification pit excavation, and elevations to completed and reclaimed lake areas' bottoms.

**Property Record Number and Location:** The subject property is located on Highway 53 East, approximately 12.3 miles east of Burgaw and consists of three parcels totaling 397.87 acres identified by Pender County PINs 3372-73-3224-0000, 3372-54-9374-000L, and 3372-84-3536-0000.

**Zoning District of Property:** The property is currently zoned GI, General Industrial, and Crushed and Broken Limestone Mining and Quarrying (NAICS Industry Code 212312) is permitted in GI via Special Use Permit. Additionally, the mining facility has been in operation since the approval of the original Special Use Permit (SUP 04-09-19-13) in 2004.

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**PROJECT DESCRIPTION:**

Shelter Creek Capital, LLC, applicant and owner, is requesting approval of a major revision to an existing Special Use Permit (SUP 05-08-15-13R) to allow an increase in the depths previously approved for limestone extraction, sump clarification pit excavation, and elevations to completed and reclaimed lake areas' bottoms. *Table 1* overviews the depths approved in the original Special Use Permit on September 20, 2004, the revised depths approved in the SUP revision on August 15, 2005, and the increase in depths requested by the applicant in the current major SUP revision request.

	Approved in SUP 04-09-19-13*	Approved in SUP 05-08-15-13R*	Requested Revision*
Dewatering Activities	45	65	120
Limestone Excavation Depth	38	60	80
Sump Clarification Pit Excavation	58	80	120
Completed and Reclaimed Lake Area's Bottom Elevation	38	38	58

*\*Figures shown in ft. below mean sea level (MSL)*

The applicant is not proposing or requesting an increase to the mineable area. Both SUP 04-09-19-13 and SUP 05-08-15-13R approved 252 acres of mineable area. The applicant is currently limited to 252 acres of mineable area based on a revision to Mining Permit No. 71-45 issued by NC DENR Division of Land Resources on June 10, 2011. Additionally, the cumulative wetland impact area has decreased from 46.92 acres to 43.82 acres.

In summary, the applicant is requesting to increase the maximum depth for dewatering activities from 65 feet MSL to 120 feet MSL, increase the maximum depth for limestone excavation from 60 feet MSL to 80 feet MSL, increase the maximum depth for sump clarification pit excavation from 80 feet MSL to 120 feet MSL, and increase the completed and reclaimed lake area's bottom elevation from 38 feet MSL to 58 feet MSL. No other alteration to SUP 05-08-15-13R is requested with this major SUP revision request.

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#### **ABBREVIATED PROJECT HISTORY:**

This project history was prepared based on the best available information.

On September 20, 2004, the Pender County Board of Commissioners (BOC) approved an SUP (SUP 04-09-19-13) request for excavation and mining on 252 acres of the subject property known as Shelter Creek Quarry. The SUP approval included a multitude of conditions, including a limitation to depths of dewatering activities, excavation and extraction activities, and the completed and reclaimed lake area bottoms.

On August 15, 2005, the Pender County BOC approved a revision to SUP 04-09-19-13 (SUP 05-08-15-13R), increasing the maximum depths of dewatering activities, excavation and extraction activities, and the completed and reclaimed lake area bottoms. According to the meeting minutes, the increase in depths was necessary to accommodate a shortfall in the estimates of minable material at the site. No other revisions to the original SUP were requested or approved.

On February 26, 2007, the NC Department of Environment and Natural Resources (DENR) Division of Land Resources (DLR) issued Mining Permit 74-51, authorizing a total a project area of 398 acres, with a minable area of 65.27 acres.

On January 7, 2011, the Shelter Creek Quarry transferred ownership from Yellow Lab Farms, LLC to Shelter Creek Capital, LLC.

On February 24, 2011, the NC DENR Division of Water Quality (DWQ) issued a revised approval of a 401 Water Quality Certification, authorizing a total cumulative wetland impact of 43.82 acres.

On March 10, 2011, the US Army Corps of Engineers (USACE) issued a revised approval of an Individual Permit, authorizing impact to 41.11 acres of jurisdictional wetlands.

On June 10, 2011, the NC DENR DLR issued a revised approval to Mining Permit 74-51, authorizing a total project area of 398 acres, with a minable area of 252 acres.

On July 7, 2011, after several phone calls and email exchanges, Planning Staff met with Shelter Creek Capital, LLC and Southern Environmental Group, Inc. (SEGi, agent for Shelter Creek Capital, LLC) representatives to discuss proposed revisions to SUP 05-08-15-13R. The proposed revisions included the development of additional equipment and accessory buildings to accommodate new aggregate processing, and increases to the approved depths for dewatering activities, excavation and extraction activities, and the completed and reclaimed lake area bottoms. After the meeting, Planning Staff advised SEGi that the proposed revisions can be concurrently processed as one minor and one major revision. The new equipment and buildings could be processed as a minor SUP revision followed by a subsequent Major Site Development Application review process. However, because the maximum activity and lake bottom depths were conditions to the original and revised Special Use Permits, any proposed changes to those conditions would require a major revision and subsequent hearing at a BOC meeting, in accordance to Article 3.12.4.H of the Pender County Unified Development Ordinance.

On July 12, 2011, SEGi submits application packages for the minor and major SUP revisions. On July 13, 2011, Planning Staff notifies the applicant's agent of approval of the minor SUP revision.

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**EVALUATION:**

- A. **Public Notifications:** Advertisements for the proposal have been placed in the *Topsail Voice* and *The Pender Post*. Adjacent property owners were notified by first class mail.
- B. **Basis for Granting SUP:** See attachment A for approval procedures (§3.12.3 of Unified Development Ordinance) and revision and revocation procedures (§3.12.4 of Unified Development Ordinance).
- C. **Unified Development Ordinance Compliance:** The property is currently zoned GI, General Industrial, and Crushed and Broken Limestone Mining and Quarrying (NAICS Industry Code 212312) is permitted in GI via Special Use Permit. Additionally, the mining facility has been in operation since the approval of the original Special Use Permit (SUP 04-09-19-13) in 2004.
- D. **2005 CAMA Land Use Plan Compliance:** The subject property contains three types of land use classifications found in the 2005 CAMA Land Use Plan, including Rural Areas, and Conservation Areas I and II. However, the existing and proposed development and extraction activities are limited to areas classified as Rural Areas, which provides for business traditionally associated with rural farm areas and extraction activities.
- E. **2010 Comprehensive Land Use Plan Compliance:** The subject property is classified entirely as Rural Growth in the *2010 Comprehensive Land Use Plan*. The Rural Growth land use classification defines those areas of the County where urban services such as public water and sewer are not expected to be provided, this limiting any surrounding residential development to low density. Incompatible residential and non-residential land uses in Rural Growth areas can be accommodated through spatial separation from existing residential development; the project area of the quarry on the subject property is surrounded from existing development to the east and southeast by significant buffer areas, and the areas to the southwest and north are undeveloped and are under permanent conservation restrictions.

The SUP revision request is also supported by goals and policies within the *2010 Comprehensive Land Use Plan*:

*Policy 1A.1.5 – The County supports a pro-business/pro-growth attitude, balance by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.*

*Goal 6A.1 – Ensure that natural resources are maintained or enhanced as development occurs.*

*Goal 10A.1 – Promote economic development which meets the needs of the County for expanding the non-residential tax base and providing well-paying jobs.*

*Policy 10A.1.7 – Protect, enhance, and encourage a high quality of life, including the conservation and management of natural and man-made resources, as an effective component of an economic development and diversification strategy.*

Additionally, the SUP request does not conflict with any goals and policies in the 2010 LUP.

- F. **Existing Land Use in Area:** The existing land use in the areas surrounding the project site include large conservation areas and very low residential uses. Ten homes lie over ½ mile to the south of the project area, buffered by a portion of a 983-acre State-owned tract included in the Angola Bay/Holly Shelter Game Lands. Seven additional homes are within one mile of the project area, located to the

east/northeast of the project area on NC Highway 53 East. Vast undeveloped State-owned conservation tracts lie to the north and northwest of the project site.

G. **Site Access Conditions:** The property has direct access to NC Highway 53 East via an existing driveway; NC DOT has indicated that no driveway or access improvements are necessary to accommodate the proposal.

H. **Conditions To Consider In Issuing the Special Use Permit For This Project:**

1. The project shall comply with all requirements of the Pender County Unified Developed Ordinance.
2. Unless approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void, if a final zoning permit has not been issued for the project within 12 months.
3. A separate permit must be obtained for any proposed signs in accordance with Article 10 of the Pender County Unified Development Ordinance.
4. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
5. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.
6. With the exception of the increases in depths as previously described, all other conditions of SUP 04-09-19-13 and SUP 05-08-15-13R shall remain in effect.

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**TECHNICAL REVIEW COMMITTEE (TRC) RESPONSES:**

**Cape Fear Council of Governments RPO**

*No response.*

**Four County Electric Company**

*No response.*

**NC DENR Division of Coastal Management**

*No response.*

**NC DENR Division of Forestry**

*No response.*

**NC DENR Division of Land Resources**

*No response.*

**NC DENR Division of Waste Management**

*No comments/problems with proposal.*

**NC DENR Division of Water Quality**

*No response.*

**NC DOT Division of Highways**

*No comments/problems with proposal; the proposal does not necessitate any driveway improvements.*

**NC DOT Transportation Planning Branch**

*No response.*

**NC Office of State Archaeology**

*No response.*

**NC Wildlife Resources Commission**

*No response.*

**Pender County Emergency Management**

*No response.*

**Pender County Environmental Health**

*No response.*

**Pender County Fire Marshall**

*No response.*

**Pender County Parks and Recreation**

*No response.*

**Pender County Permitting/Floodplain Administrator**

*The applicant needs to submit a site plan showing any and all equipment, buildings, and storage areas that have or are proposed to be developed. The site plan must also show information from the FIRM, including SFHA (AE flood zone) boundaries, non-encroachment areas, and cross sections. Should any proposed development occur in a SFHA, a non-impact study must be performed for the proposed development.*

**Pender County Public Library**

*No response.*

**Pender County Public Utilities**

*No comments/problems with proposal.*

**Pender County Schools**

*No response.*

**Pender County Sheriff's Department**

*No response.*

**Pender County Soil and Water Conservation District**

*No comments/problems with proposal.*

**Progress Energy Corporation**

*No response.*

**US Army Corps of Engineers**

*No response.*

**Wilmington Metropolitan Planning Organization**

*No comments/problems with proposal as it is out of the WMPO planning area.*

by the County Commissioners and current provisions of the Zoning Ordinance. The addition of an accessory structure less than 1000 sq. ft., addition of parking or other ancillary facilities or uses or the addition of similar product lines are examples of revisions that may be considered minor revisions.



Office Use Only								
<input type="checkbox"/>	General// Fees: \$300 + \$10 per acre over 5 acres. Max of \$5,000	Total Fee Calculation: \$						
<input type="checkbox"/>	Tower over 75 Feet// Fees \$500	Application#:						
<input type="checkbox"/>	Minor Revisions // Fees \$ 100	Date of Hearing:						
<input type="checkbox"/>	Mining Borrow Pit// Fees \$750							
<input type="checkbox"/>	Mining Other// Fees \$1000 + \$5 per acre							
Attachments Included with Application: (Please include # of copies)								
CD/other digital version	<input type="checkbox"/> Yes <input type="checkbox"/> No	Plan Set	of large	of 11x17	Other Attachments/Reports	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Payment Method:	Cash: <input type="checkbox"/> \$	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	check: <input checked="" type="checkbox"/> Check					
Application received by:						Date:		
Application completeness approved by:						Date:		

### SPECIAL USE PERMIT CHECKLIST

<input type="checkbox"/>	Signed Application Form. (Both Applicant and Owner)
<input type="checkbox"/>	Application fee
<input type="checkbox"/>	Legible list of all property owners adjacent to the property upon which the use is to be located. The list shall include the mailing address & physical address of these property owners (The application will not be advertised for public hearing until the list is accurate & complete)
<input type="checkbox"/>	One business size envelope legibly addressed with first class postage for each of the adjacent property owners on the above list.
<input type="checkbox"/>	<b>Project Narrative--Written description of the project (max of 3 pages) including the following:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Location of the project and type of access to project site</li> <li><input type="checkbox"/> Detailed description of the activities to be undertaken on the site, including hrs. of operation, # of employees, etc.</li> <li><input type="checkbox"/> Description of all construction activities to be undertaken on the site</li> <li><input type="checkbox"/> Describe type of utilities that will serve project and status of approval from applicable providers</li> <li><input type="checkbox"/> List of all state and federal permits that will be required for the project</li> <li><input type="checkbox"/> Describe any potential impacts the project will have on the community or adjacent properties such as traffic, noise, etc. and explain efforts to mitigate these impacts (this item must be addressed by the applicant). The applicant may also wish to describe any positive benefits the project will provide for the community and/or neighbors of the project.</li> </ul>
<input type="checkbox"/>	<b>Project Map(s)--Map or maps of the special use project site with boundaries of the project if less than the parcel boundaries. This map or maps shall be drawn to a readable scale. The scale shall be not more than 200' to the inch. The map shall display an accurate bar graph scale, date prepared, north arrow and the author of the map. This map(s) shall show the following:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Boundaries of the property upon which the special use will be located, the acreage in the property and project site, with a north arrow and bar graph.</li> <li><input type="checkbox"/> Access from the site and/or project boundaries to the nearest publicly maintained road.</li> <li><input type="checkbox"/> Location of any existing structures or uses on the property and within 50' of the property.</li> <li><input type="checkbox"/> Location of the project boundaries if they do not coincide with the property boundaries.</li> <li><input type="checkbox"/> Existing and proposed structures, other on-site improvements, and location of all activities associated with the use, location of well, septic tank, and/or other utilities.</li> <li><input type="checkbox"/> Boundary of all clearing, grading, and/or land disturbing activities on the site and the calculated acreage of all land disturbing activities on the site.</li> <li><input type="checkbox"/> Parking, loading areas, and access to the project (See Article 6, Pender County UDO)</li> <li><input type="checkbox"/> Landscaping and buffering (See Article 7, Pender County UDO)</li> <li><input type="checkbox"/> All signs to be located on the property (See Article 9, Pender County UDO)</li> <li><input type="checkbox"/> Pedestrian walks, area lighting and flood lighting.</li> <li><input type="checkbox"/> Existing natural features of the site including, wooded areas, tree lines, ponds, streams, other water bodies or ditches on or adjacent to the site, designated flood hazard areas &amp; known or designated wetlands on the site.</li> <li><input type="checkbox"/> Drainage plan and/or direction of flow of runoff from the project and site.</li> <li><input type="checkbox"/> After review by the Planning and Community Development Department, additional information may be required to be submitted.</li> <li><input type="checkbox"/> Two full size and twenty reduced size (max. 11"x17") copies of this map(s) shall be submitted.</li> </ul>

RETURN COMPLETED APPLICATION TO:  
Pender County Planning & Community Development  
P.O. Box 1519  
Burgaw, NC 28425

Print form

# Southern Environmental Group, Inc.

5315 South College Road, Suite E, Wilmington, NC 28412  
Phone: 910.452.2711 • Fax: 910.452.2899 • Email: office@seg.us

12 July 2011

## Hand Delivery

Benjamin D. Andrea, Planner II  
Pender County Planning and Community Development  
Division of Planning  
PO Box 1519  
Burgaw, NC 28425

**Re: Shelter Creek Lime and Stone  
Request for Major Revision to Special Use Permit #05-08-15-13R (v2)**

Dear Ben,

Southern Environmental Group, Inc. (SEGI), on behalf of Shelter Creek Capital, LLC (herein referred to as the "Applicant"), is submitting the attached Special Use Permit (SUP) Application (see Attachment 1), filing fee (Attachment 2) and the required supplemental information outlined in the "Special Use Permit Checklist", found on page two of the Application. This application is being submitted in order to address changes to the SUP, originally granted by Pender County under SUP #04-09-19-13 and then later revised under SUP#05-08-15-13R. The site is located at 12121 Highway 53 East, near Maple Hill (see Attachment 2- Vicinity Map). Shelter Creek Lime and Stone employs 43 employees and operates from 5:30 am to 9 pm, Monday through Saturday.

## Adjacent Property Owners:

According to the Pender County GIS Website, the following are listed as the current adjacent property owners, of the Shelter Creek Lime and Stone, previously know as Shelter Creek Quarry (please see Attachment 3 – Adjacent Property Exhibits):

Name	Address	Map ID*
State of North Carolina Property Office	C/O NC State Property Office, 1321 Mail Services Center, Raleigh, NC 27699	1
State of North Carolina Property Office	Attn: D Chad Guthrie, 1321 Mail Services Center, Raleigh, NC 27699	2
Mr. Stephen C. Holland	8315 Hwy 53 East, Burgaw, NC 28425	3, 4
Mr. Bruce W. Rlokenbaeker, et al	2505 Highland Drive, Wilmington, NC 28403	5
S&D Enterprizes of Wilmington, LLC	6101 Diamond Shamrock Rd., Castle Hayne, NC 28429	6
Mr. James Powers	300 Hillman Road, Kinston, NC 28501	7
Mr. Alexander M. Hall et al	718 Market Street, Wilmington, NC 28401	8
Mr. Emory Grubbs	1929 Harrison Street, Wilmington, NC 28401	9

\*Please refer to Attachment 3 – Adjacent Property Owner Maps.

Envelopes have been included as part of this submission (see Attachment 5)

**Project Description:**

Originally the property was purchased by Yellow Lab Farms, LLC for the purpose mining aggregate material. On 7 January 2011, the approximately 380 acre site was purchased by and conveyed to Shelter Creek Capital, LLC. Since the inception of the project, the intent has been to mine approximately 252 acres of the site for sand, marl and limestone. However, during the initial planning phase, it was not known that impacts to US Army Corps of Engineers 404 and Division of Water Quality 401 wetlands would be needed to facilitate the mining operation. Upon determining the extent of wetlands within the proposed minable area, the Applicant began the Individual Permit process, through the USACE and DWQ, to obtain the necessary authorizations to impact wetlands. These permits were issued on 10 March 2011 and 24 February 2011, respectively, and authorized the cumulative impact of 43.82 acres of jurisdictional wetlands (these documents were submitted to you on June 28, via email).

As part of the Applicant's willingness to minimize wetland impacts to the furthest extent practicable, the minable area was reduced. This reduction in minable area minimized impacts to wetlands by 3.73 acres. Once approval by the USACE and DWQ were secured, the Applicant secured a modified mining permit that authorized the mining of 252 acres (see Attachment 6 – DLR Mining Permit).

The following table summarizes all the environmental permits held by Shelter Creek Capital, LLC:

Regulatory Agency	Permit Type	Permit No.	Issuance Date	Expiration Date
NC DWQ 401	Individual Cert.	3849	2/24/11	Concurrent with the USACE IP
<sup>1</sup> NC DWQ SWP	NCG020000 (mine site)	020679	6/7/11	Concurrent with the Mining Permit
USACE	Individual Permit	2008-01720	3/10/11	3/18/61
NC DAQ	Small Class Emissions	09551R00	Modification in Progress	12/13/13
<sup>2</sup> DCM	CAMA Consistency	CD11-010	2/25/11	Concurrent with the IP and 401
NC DLR	Mining Permit	71-45	6/10/11	10 years from the issuance date
<sup>3</sup> DWR	Water Withdrawal Registration	Unknown	5/16/11	Concurrent with Mining Project

<sup>1</sup> See Attachment 7, <sup>2</sup> See Attachment 8, <sup>3</sup> See Attachment 9)

Other than the reduction in minable area, the depth of excavation of the limestone has been changed to 80 feet below MSL; the sump clarification pit excavation has been changed to 120 feet below MSL; the completed and reclaimed lake areas' bottom elevation has changed to 58 feet below MSL and the maximum depth of dewatering has changed to 120 feet below MSL (please refer to Attachment 4 – Shelter Creek Quarry 10 Year Movable Area Map for details). These changes are the only alterations to be considered, with this request.

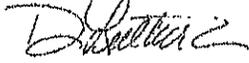
**Summary**

The use of this property has not changed. Aside from the previous owner, the property is far removed from any residential or commercial development. The proposed improvements and alterations are consistent with the size of the property and project. With that said, it is of my opinion that the improvements and alterations proposed will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or immediate neighbors of the property. The special use will conform to the applicable regulations of the district and will not affect surrounding uses.

It is my sincere hope that the information found within this correspondence provides you with sufficient information to process the revision to the Special Use Plan. However, if you have questions or concerns, please feel free to contact me at my office (910.452.2711).

Thank you, in advance, for your time and assistance with this project.

Sincerely,



Dana A. Lutheran  
SEGi Project Manager

Enclosures (8)

Cc: Mr. Kyle McIntyre – President, Shelter Creek Lime and Stone